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Letter dated 23 October 2008 from the President of the Governing Council of the United Nations Compensation Commission addressed to the President of the Security Council

I am pleased to provide this report on the results of the Governing Council's sixty-sixth session, which was held at Geneva on 21 and 22 October 2008.

During the opening plenary meeting, which was chaired by Indonesia, one of the Vice-Presidents, representatives of Kuwait and Iraq addressed the Council. Copies of their respective statements are being sent by mail with the original of this letter.

During the session, the Council considered a report from the secretariat on the activities of the Commission since the last session.

In its discussion on the level of Iraq's contribution to the Compensation Fund, the Council recalled that, at its sixty-fifth session, it had welcomed the willingness of the Governments of Iraq and Kuwait to commence consultations under the auspices of the Commission to discuss the approximately $24 billion in unpaid awards that would remain outstanding after the payment of the category II claims. In its conclusion, the Council noted with regret that, despite the efforts of the secretariat to arrange a meeting and Kuwait's readiness to begin discussion under the auspices of the Commission, consultations had not yet been held, owing to Iraq's unavailability on any agreed dates. The Council reiterated its strong support for the consultations under the auspices of the Council and requested that the Executive Head convey to the Governments of Iraq and Kuwait the importance that the Council attaches to these consultations and encourage the parties to meet as soon as possible after the conclusion of the current session to begin this process. The Council reaffirmed its request that the Executive Head attend and facilitate the meetings and keep the Council advised of any developments.

With respect to the issue of arrangements for ensuring that payments are made to the Compensation Fund, the Council noted that the shortfall of income to the Fund had increased to $141.5 million with the release of the audit results of the Development Fund for Iraq for the year ending 31 December 2008. The Council requested the Executive Head to continue to monitor the shortfall and the outcome of future meetings of the International Advisory and Monitoring Board, and to keep the Council advised of any further developments. The Council also noted that the mandate of the Board may expire at the end of this year, and the Iraq Committee of Financial Experts may assume responsibility for oversight of Iraqi oil export revenues. The Council further noted that the Committee had expressed a willingness

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to cooperate with the Commission and that, at its request, the Executive Head would be meeting with the head of the Committee in Paris immediately after the meeting of the Board, which is being held in Paris on 20 and 21 October 2008, to discuss the arrangements for payments, among other issues. The Council indicated its support for early consultations and exchange of information with the Committee.

During the session, the Council had an extensive discussion on the Follow-up Programme for Environmental Awards. On the status of the programme, the Council took note of the reports submitted by the independent reviewers and the national focal points of Jordan, Kuwait and Saudi Arabia. The Council also took note of the expert candidates proposed by Saudi Arabia to replace a member of its independent reviewer team and encouraged Saudi Arabia to expedite the bidding process for selecting its project planning, management and supervision contractor. The Council took note of the progress made by Jordan and encouraged it to continue its efforts to develop its comprehensive rangeland restoration programme with a view to presenting a preliminary phasing plan at the next Governing Council session.

With respect to the issue of creating a new mechanism for administering funds on phased projects, and the withholding of funds under decision 258 (2005), the Council recalled the request made by the Government of Kuwait to create a mechanism for the management and administration of such funds. In considering the options of creating a separate United Nations account or setting up an escrow account in (a) a Central Bank or (b) a private bank, the Council thanked the Government of Kuwait for the comprehensive information provided, thanked the other claimant Governments for their responses on this matter, and thanked the secretariat for the comprehensive information note. The Council was unable to reach consensus on the preferred option at this session, but noted however the importance of a timely disposition of this issue. Accordingly, the Council requested that this matter be placed on the agenda for an informal meeting to be held in December 2008 with a view to taking a decision on options in advance of the January 2009 payment round, and noted that in the meantime the October payment round will be made in the ordinary way. The Council recognized that the disbursement of the October 2008 payment would not prejudice the manner in which the January 2009 payment would be disbursed.

The Council directed the secretariat to continue its consultations with the Office of the Controller and with claimant Governments to obtain more information on various issues surrounding the implementation of the option of a separate United Nations account and the option of an escrow account in the Central Banks, including in particular the specific arrangements through which the Commission could direct the release of funds and the mechanism through which such arrangements would be effected; the specific manner in which interest would accrue and be made available; the manner in which funds would be invested; clear views from the Governments of Jordan and Saudi Arabia on the separate United Nations account option; and additional information from the Government of Kuwait on the feasibility of the Central Bank option or a variation thereof. The Council decided that the option of an escrow account in private banks should not be pursued further.

Recalling that, at its sixty-fifth session, the Council had directed the Governments of Kuwait and Saudi Arabia to segregate future payments to their awards Nos. 5000450, 5000454, 5000451 and 5000455 pending further decisions of the Council, the Council discussed the current status of withheld and segregated

funds under decision 258. The Council noted the possibility of withholding an amount greater than the mandatory 15 per cent, and requested that the secretariat prepare options on the possible withholding of a percentage additional to the 15 per cent from the remaining awards; and develop proposals for administering phased payments under the phasing plan requirement of decision 258 based on milestones should the Governing Council decide to withhold funds in excess of the mandatory 15 per cent.

The Council further directed the secretariat to write to the Governments of Kuwait and Saudi Arabia to remind them of the direction to segregate payments to awards made since the April 2008 payment round, and to direct them to continue to segregate future payments to those awards, noting that the segregated funds should be available for transfer to another arrangement in accordance with a future decision of the Governing Council on a special account. The Council noted the letter provided by the Government of Kuwait reporting on the manner in which segregated funds are being held, and expressed concern about the absence of reporting from Saudi Arabia on this point. In that regard, the Council requested that the secretariat reiterate the Council's request for such reporting to Saudi Arabia and noted that the mandatory 15 per cent withholding under decision 258 would begin for the Government of Saudi Arabia with the October 2008 payment round.

With respect to future arrangements for the Follow-up Programme for Environmental Awards, the Council had a preliminary discussion of paragraph 6 of decision 258 which provides that, prior to the eventual disestablishment of the Governing Council, the Council will consider further arrangements with regard to its review functions as set out in the guidelines. The Council was of the view that, given the amount of time that would be required to consider options and make any arrangements for implementation, early consideration was advisable and put this issue on the agenda for the next session.

The Council also considered a report on payment activities, the distribution by Governments and international organizations of payments to successful claimants and the return of undistributed funds. The Council was informed by the secretariat that the next payment to successful claimants pursuant to decision 256 is scheduled to be made on 29 October 2008 and that there are now 16 approved claims (in the corporate and government claims categories), with a total outstanding balance of approximately $27 billion, which have not been paid in full. The overall amount of compensation made available to date by the United Nations Compensation Commission is approximately $25.3 billion.

With respect to the audit of Commission activities, the Council took note of the letter from the United Nations Board of Auditors management on the midterm accounts of the Commission for the 2006-2007 fiscal period and follow-up with respect to previous recommendations and the response of the secretariat; and the report of the Board of Auditors to the Security Council on the financial statements of the Commission for the biennium ended 31 December 2007. The Council also took note of the report of the Office of Internal Oversight Services to the General Assembly which confirms that the Commission has implemented all audit recommendations issued by that Office.

The Council also took note of a report of the Committee on Administrative Matters regarding the final expenditure report for the biennium 2006-2007 and the interim expenditure report for the biennium 2008-2009. As reflected in its report,

the Committee requested that the President of the Governing Council seek clarification with respect to the mandate of and costs associated with the appointment of a Special Representative of the Secretary-General to the Commission.

The Council decided to hold its next regular session on 28 and 29 April 2009.

(*Signed*) Alex **Van Meeuwen**
President of the Governing Council